

108TH CONGRESS  
2D SESSION

# S. 2369

To require the Secretary of Health and Human Services to undertake activities to ensure the provision of services under the PACE program to frail elders living in rural areas, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2004

Mrs. LINCOLN (for herself, Mr. BROWNBACK, Mr. BREAUX, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To require the Secretary of Health and Human Services to undertake activities to ensure the provision of services under the PACE program to frail elders living in rural areas, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Community Options  
5 for Rural Elders Act of 2004” or the “CORE Act of  
6 2004”.

7       **SEC. 2. DEFINITIONS.**

8       In this Act:

1           (1) CMS.—The term “CMS” means the Cen-  
2       ters for Medicare & Medicaid Services.

3           (2) ELIGIBLE PARTICIPANT.—The term “eligi-  
4       ble participant” means a PACE program eligible in-  
5       dividual (as defined in sections 1894(a)(5) and 1934  
6       (a)(5) of the Social Security Act (42 U.S.C.  
7       1395eee(a)(5); 1396u-4(a)(5))).

8           (3) HRSA.—The term “HRSA” means the  
9       Health Resources and Services Administration.

10          (4) ORHP.—The term “ORHP” means the Of-  
11       fice of Rural Health Policy of HRSA.

12          (5) PACE PROGRAM.—The term “PACE pro-  
13       gram” has the meaning given that term in sections  
14       1894(a)(2) and 1934(a)(2) of the Social Security  
15       Act (42 U.S.C. 1395eee(a)(2); 1396u-4(a)(2)).

16          (6) PACE PROGRAM AGREEMENT.—The term  
17       “PACE program agreement” has the meaning given  
18       that term in sections 1894(a)(4) or 1934(a)(4) of  
19       the Social Security Act (42 U.S.C. 1395eee(a)(4);  
20       1396u-4(a)(4)).

21          (7) PACE PROVIDER.—The term “PACE pro-  
22       vider” has the meaning given that term in sections  
23       1894(a)(3) or 1934(a)(3) of the Social Security Act  
24       (42 U.S.C. 1395eee(a)(3); 1396u-4(a)(3)).

1           (8) RURAL AREA.—The term “rural area” has  
2     the meaning given that term in section  
3     1886(d)(2)(D) of the Social Security Act (42 U.S.C.  
4     1395ww(d)(2)(D)).

5           (9) RURAL PACE PROVIDER APPLICANT.—The  
6     term “rural PACE provider applicant” means a  
7     PACE provider or a public entity or private, non-  
8     profit entity organized under section 501(c)(3) of  
9     the Internal Revenue Code of 1986, that has applied  
10    to provide services in a rural area in a manner con-  
11    sistent with the objectives of the PACE program and  
12    this Act.

13          (10) RURAL PACE PROVIDER.—The term “rural  
14    PACE provider” means a rural PACE provider ap-  
15    plicant that has been approved to provide services in  
16    whole or in part in a rural area in a manner con-  
17    sistent with the objectives of the PACE program and  
18    this Act.

19          (11) RURAL PROVIDER.—The term “rural pro-  
20    vider” means a health care, housing, or community  
21    service provider offering services in whole or in part  
22    in a rural area.

23          (12) RURAL SERVICE AREA.—The term “rural  
24    service area” means a rural area served by a PACE  
25    provider.

1           (13) SECRETARY.—The term “Secretary”  
2       means the Secretary of Health and Human Services.

3 **SEC. 3. PURPOSES.**

4       The purposes of this Act are—

5           (1) to require the Secretary to undertake activi-  
6       ties to fully exercise existing statutory and regu-  
7       latory authority to waive certain PACE program ele-  
8       ments which may impair the ability of otherwise  
9       qualified entities to provide PACE services to quali-  
10      fied beneficiaries in rural areas;

11          (2) to establish a foundation of experience in  
12      utilizing the PACE program model to serve qualified  
13      beneficiaries in rural areas such that the model’s  
14      transition to those areas proceeds rationally and in  
15      full consideration of the unique needs of rural, frail  
16      elders; and

17          (3) to regularly evaluate and report on the clin-  
18      ical and cost-effectiveness of providing PACE serv-  
19      ices in meeting the needs of medicare and medicaid  
20      beneficiaries living in rural areas.

21 **SEC. 4. PROGRAM TO SUPPORT PACE DEVELOPMENT IN**  
22 **RURAL AREAS.**

23      (a) IN GENERAL.—The Secretary shall provide for  
24      the Administrator of HRSA to work with the Adminis-  
25      trator of CMS to establish PACE providers in rural areas.

1 (b) ADAPTION OF PROGRAM FOR REQUIREMENTS OF  
2 RURAL PARTICIPANTS.—In order to support the establish-  
3 ment of PACE providers in rural areas, the Secretary  
4 shall permit a rural PACE provider applicant to modify  
5 the PACE program to be operated by the provider while  
6 delivering services consistent, to the maximum extent fea-  
7 sible, with the general intent and scope of services of that  
8 program, in order to adapt the PACE program to the  
9 unique requirements of eligible participants residing in  
10 rural areas and the challenges of providing services to  
11 such participants.

12 (c) DEEMED APPROVAL OF PROVISION OF A PACE  
13 PROGRAM AGREEMENT OF A RURAL PACE PROVIDER  
14 APPLICANT.—In the case of a rural PACE provider appli-  
15 cant with a PACE program agreement—

16 (1) the rural PACE provider applicant shall  
17 identify the provisions of such agreement that the  
18 applicant proposes to apply if the applicant is ap-  
19 proved to be a rural PACE provider; and

20 (2) the Secretary shall review such provisions  
21 and, if the Secretary approves the applicant to be a  
22 rural PACE provider, deem such provisions as the  
23 Secretary determines appropriate to apply to the  
24 rural PACE provider's PACE program agreement.

1       (d) APPLICATION OF FLEXIBILITY IN EXERCISING  
 2 WAIVER AUTHORITY.—The Secretary shall utilize the au-  
 3 thority provided under section 903 of the Medicare, Med-  
 4 icaid, and SCHIP Benefits Improvement and Protection  
 5 Act of 2000 (114 Stat. 2763A–583), as enacted into law  
 6 by section 1(a)(6) of Public Law 106–554, and the regula-  
 7 tions issued to carry out that authority to allow for max-  
 8 imum flexibility in the operations of rural PACE pro-  
 9 viders. In exercising such authority, the Secretary shall  
 10 waive or modify regulatory requirements applicable under  
 11 part 460 of title 42, Code of Federal Regulations to the  
 12 extent necessary for a rural PACE provider. The waiver  
 13 or modification of regulatory requirements shall include  
 14 requirements relating to—

- 15           (1) the PACE Center;
- 16           (2) employment;
- 17           (3) the use of community-based primary care  
 18       physicians;
- 19           (4) the format, structure, and composition of  
 20       the interdisciplinary team and its meetings; and
- 21           (5) other requirements as are necessary for  
 22       purposes of providing, operating, and integrating  
 23       PACE services in rural areas.

24       (e) WAIVER AUTHORITY.—

1           (1) IN GENERAL.—Subject to paragraph (2),  
 2           the Secretary shall waive such requirements of titles  
 3           XI, XVIII, and XIX of the Social Security Act (42  
 4           U.S.C. 1301 et seq.; 1395 et seq.; 1396 et seq.) as  
 5           may be necessary for purposes of supporting the de-  
 6           livery of PACE services in rural areas as set forth  
 7           by the rural PACE provider applicants in their ap-  
 8           plications.

9           (2) REQUIRED WAIVER OF FULL FINANCIAL  
 10          RISK REQUIREMENT FOR INITIAL 3-YEARS OF OPER-  
 11          ATION.—

12           (A) IN GENERAL.—The Secretary—

13                   (i) shall waive the requirement that a  
 14                   rural PACE provider in at least its first 3  
 15                   years of operation be at full financial risk;  
 16                   and

17                   (ii) upon request by the rural PACE  
 18                   provider, may waive such requirement with  
 19                   respect to years of operation after the first  
 20                   3 years of operation if the Secretary deter-  
 21                   mines that the rural PACE provider is op-  
 22                   erating properly and has demonstrated a  
 23                   reasonable basis for not assuming full risk.

24           (B) SOME RISK REQUIRED.—Nothing in  
 25          subparagraph (A) shall be construed to imply

1           that a rural PACE provider shall bear no finan-  
2           cial risk for the population it serves.

3   **SEC. 5. STARTUP AND TECHNICAL ASSISTANCE FOR RURAL**  
4           **PACE PROVIDERS.**

5           (a) SITE DEVELOPMENT GRANTS.—

6               (1) IN GENERAL.—The Secretary shall award  
7               \$7,500,000 in site development grants to rural  
8               PACE providers.

9               (2) AMOUNT PER AWARD.—A grant awarded  
10              under paragraph (1) to a rural PACE provider shall  
11              not exceed \$750,000.

12              (3) USE OF FUNDS.—Funds made available  
13              under a grant awarded under paragraph (1) may be  
14              used for the following expenses only if such expenses  
15              are incurred in relation to establishing or delivering  
16              PACE program services in a rural area:

17                      (A) Feasibility analysis and planning.

18                      (B) Interdisciplinary team development.

19                      (C) Development of a provider network, in-  
20                      cluding contract development.

21                      (D) Development or adaptation of claims  
22                      processing systems.

23                      (E) Preparation of special education and  
24                      outreach efforts required for the PACE pro-  
25                      gram.



1 (F) Development of expense reporting re-  
 2 quired for calculation of outlier payments or  
 3 reconciliation processes.

4 (G) Development of any special quality of  
 5 care or patient satisfaction data collection ef-  
 6 forts.

7 (H) Establishment of a working capital  
 8 fund to sustain fixed administrative, facility, or  
 9 other fixed costs until the provider reaches suf-  
 10 ficient enrollment size.

11 (I) Startup and development costs incurred  
 12 prior to the approval of the rural PACE pro-  
 13 vider applicant's application by CMS.

14 (J) Any other efforts determined by the  
 15 rural PACE provider to be critical to the pro-  
 16 vider's successful startup, as approved by the  
 17 Secretary.

18 (4) ADMINISTRATION OF SITE DEVELOPMENT  
 19 GRANTS.—The Secretary shall instruct the ORHP,  
 20 to develop, in consultation with the Administrator of  
 21 CMS, criteria for awarding site development grants  
 22 and to establish processes for administering and  
 23 overseeing the awarded grant funds. A prerequisite  
 24 for receiving a site development grant shall be the  
 25 approval of the rural PACE provider applicant's ap-

1 plication by CMS. The grant approval process and  
2 the administration of grant funds shall be the re-  
3 sponsibility of ORHP.

4 (5) APPROPRIATION.—

5 (A) IN GENERAL.—Out of any funds in the  
6 Treasury not otherwise appropriated, there are  
7 appropriated to the Secretary to carry out this  
8 subsection for the period of fiscal years 2005  
9 through 2006, \$7,500,000.

10 (B) AVAILABILITY.—Funds appropriated  
11 under subparagraph (A) shall remain available  
12 for expenditure through fiscal year 2009.

13 (b) TECHNICAL ASSISTANCE PROGRAM.—

14 (1) IN GENERAL.—The Secretary, through  
15 ORHP, shall award up to \$250,000 for each of fis-  
16 cal years 2005 through 2007 to a public entity or  
17 private, nonprofit entity organized under section  
18 501(c)(3) of the Internal Revenue Code of 1986, for  
19 the purpose of establishing a technical assistance  
20 program to provide—

21 (A) outreach and education to State agen-  
22 cies and provider organizations interested in es-  
23 tablishing PACE programs in rural areas; and

1 (B) technical assistance necessary to sup-  
 2 port providers awarded grants under subsection  
 3 (a).

4 (2) PREFERENCE IN CHOOSING A TECHNICAL  
 5 ASSISTANCE PROVIDER.—In selecting an entity for a  
 6 grant under paragraph (1), the Secretary shall—

7 (A) give preference to a technical assist-  
 8 ance program operated by an entity with pre-  
 9 vious experience in conducting outreach and  
 10 support related to PACE program development  
 11 and expansion for State agencies and prospec-  
 12 tive PACE entities across a nationally rep-  
 13 resentative number of States and providers; and

14 (B) consider the entity's familiarity with  
 15 the delivery of health services to frail elderly in-  
 16 dividuals who reside in rural areas.

17 (3) APPROPRIATION.—Out of any funds in the  
 18 Treasury not otherwise appropriated, there are ap-  
 19 propriated to the Secretary to carry out this sub-  
 20 section for each of fiscal years 2005 through 2007,  
 21 \$250,000.

22 (c) FUND FOR REIMBURSEMENT OF OUTLIER COSTS  
 23 OF GRANTEES.—

24 (1) IN GENERAL.—The Secretary shall establish  
 25 an outlier fund to reimburse rural PACE providers

1 awarded a grant under subsection (a)(1) for outlier  
 2 costs (as defined in paragraph (2)) incurred with re-  
 3 spect to eligible participants enrolled with such pro-  
 4 viders who reside in, or receive services in, a rural  
 5 area in accordance with the outlier expense payment  
 6 specified in paragraph (3).

7 (2) OUTLIER COSTS DEFINED.—

8 (A) IN GENERAL.—In paragraph (1), the  
 9 term “outlier costs” means the inpatient and  
 10 related physician and ancillary costs incurred  
 11 with respect to an eligible participant described  
 12 in paragraph (1) in excess of \$50,000 for the  
 13 most recent 12-month period.

14 (B) INCLUSION IN ONLY 1 PERIOD.—

15 Outlier costs may not be included in more than  
 16 1 12-month period for purposes of calculating  
 17 an outlier expense payment under paragraph  
 18 (3).

19 (3) OUTLIER EXPENSE PAYMENT.—

20 (A) PAYMENT FOR OUTLIER COSTS.—Sub-  
 21 ject to subparagraph (B) and the amount ap-  
 22 propriated under paragraph (5), in the case of  
 23 a rural PACE provider described in paragraph  
 24 (1) that has incurred outlier costs for an eligi-  
 25 ble participant for the most recent 12-month

1 period, the rural PACE provider shall receive  
2 an outlier expense payment equal to 80 percent  
3 of such costs.

4 (B) LIMITATIONS.—

5 (i) COSTS INCURRED PER ELIGIBLE  
6 PARTICIPANT.—The total amount of outlier  
7 expense payments made under subpara-  
8 graph (A) to a rural PACE provider for  
9 outlier costs incurred with respect to an el-  
10 igible participant shall not exceed  
11 \$100,000 per participant for the 12-month  
12 period used to calculate the payment.

13 (ii) COSTS INCURRED PER PRO-  
14 VIDER.—No rural PACE program provider  
15 may receive more than \$500,000 in total  
16 outlier expense payments paid to the pro-  
17 vider in a 12-month period.

18 (iii) OVERALL LIMIT.—In no case may  
19 the aggregate amount of outlier expense  
20 payments made under this subsection for a  
21 fiscal year exceed the amount available for  
22 expenditure under paragraph (5).

23 (4) REQUIREMENT TO ACCESS RISK RESERVES  
24 PRIOR TO PAYMENT.—A rural PACE provider shall  
25 access and exhaust any risk reserves held or ar-

1 ranged for the provider (other than revenue or re-  
 2 serves maintained to satisfy the requirements of sec-  
 3 tion 460.80(c) of title 42, Code of Federal Regula-  
 4 tions) and any working capital established through  
 5 a grant awarded under subsection (a), prior to re-  
 6 ceiving any payment from the outlier fund estab-  
 7 lished under this subsection.

8 (5) APPROPRIATION.—

9 (A) IN GENERAL.—Out of any funds in the  
 10 Treasury not otherwise appropriated, there are  
 11 appropriated to the Secretary to carry out this  
 12 subsection—

13 (i) \$2,000,000 for fiscal year 2005;

14 (ii) \$5,000,000 for fiscal year 2006;

15 and

16 (iii) \$3,000,000 for fiscal year 2007.

17 (B) AVAILABILITY.—Funds appropriated  
 18 under subparagraph (A) shall remain available  
 19 for expenditure through fiscal year 2009.

20 **SEC. 6. EVALUATION OF PACE PROVIDERS SERVING RURAL**  
 21 **SERVICE AREAS.**

22 (a) IN GENERAL.—Beginning with October 1 of the  
 23 first fiscal year that begins after the date of enactment  
 24 of this Act, and for each of the 2 succeeding fiscal years  
 25 thereafter, the Secretary shall submit to Congress annual

1 progress reports on the provision of PACE programs in  
2 rural areas.

3 (b) COMPREHENSIVE EVALUATION.—

4 (1) IN GENERAL.—In addition to the annual  
5 progress reports to be submitted in accordance with  
6 subsection (a), not later than 60 months after the  
7 effective date of final regulations implementing this  
8 Act, the Secretary shall submit a comprehensive  
9 overall evaluation of the clinical and cost-effective-  
10 ness of rural PACE providers. Funds otherwise  
11 made available to the Secretary for the purpose of  
12 conducting research or evaluations shall be used for  
13 the costs of conducting such evaluation.

14 (2) REQUIREMENTS.—The evaluation required  
15 under paragraph (1) shall include the following:

16 (A) An analysis of the quality and cost of  
17 providing PACE program services to eligible  
18 participants in rural areas as compared to such  
19 outcomes and costs for a comparable population  
20 of eligible participants that did not receive such  
21 services from a rural PACE provider.

22 (B) Such recommendations regarding the  
23 extension or expansion of rural PACE providers  
24 as the Secretary determines appropriate.

1       (c) EXTENSION OF WAIVERS.—In order to ensure  
2 continuity of care and services, the Secretary is authorized  
3 to provide for the continued participation of a rural PACE  
4 provider beyond the otherwise approved periods under this  
5 Act as well as to extend those waivers of PACE program  
6 requirements under the authority of subsections (c) and  
7 (d) of section 4 to rural PACE providers if the Secretary  
8 finds that the providers comply with the objectives of the  
9 PACE program and this Act.

10       (d) ADVISORY GROUP.—

11           (1) IN GENERAL.—The Secretary shall estab-  
12 lish, and actively consult with, an advisory group  
13 that will review and comment on progress related to  
14 providing PACE program services in rural areas.

15           (2) DUTIES.—The advisory group shall review  
16 and make recommendations with respect to—

17               (A) the consideration of prospective PACE  
18 provider applications to serve rural areas;

19               (B) the evaluation design, criteria, and re-  
20 sults achieved by rural PACE providers; and

21               (C) the technical assistance activities pro-  
22 vided under section 5(b) that support those pro-  
23 viders and States.

24           (3) MEMBERSHIP.—



1           (A) NUMBER.—Not more than 9 individ-  
2 uals shall be appointed to the advisory group  
3 established under this subsection.

4           (B) EXPERTISE.—A member of the advi-  
5 sory group shall have experience with, and un-  
6 derstanding of 1 or more of the following areas:

7                   (i) The development, organization,  
8 and operation of the PACE program.

9                   (ii) Providing services to frail elderly  
10 individuals who reside in rural areas.

11                   (iii) Federal and State programs and  
12 initiatives that are related to the PACE  
13 program.

○